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Devinthiran a/l Manni v Public Prosecutor

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COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO A-05(M)-261–10 OF 2015
VARGHESE GEORGE, VERNON ONG AND ABDUL KARIM ABDUL JALIL JJCA
15 SEPTEMBER 2016

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Criminal Procedure — Appeal — Appeal against conviction and sentence — Appellant convicted and sentenced for murder under s 302 of the Penal Code — Whether learned judicial commissioner evaluated all evidence before making final finding

D

Evidence — Adverse inference — Failure to call witness — Appellant convicted and sentenced for murder under s 302 of the Penal Code — Whether learned judicial commissioner erred in invoking adverse inference for non-calling of witness by defence — Evidence Act 1950 s 114(g) — Penal Code ss 34 & 302

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The appellant was charged together with his brother, one Thanasegaran for the murder of one Perumal a/l Kuppan ('the deceased') under s 302 of the Penal Code ('the Code') read together with s 34 of the Code. The trial judge initially found the prosecution had failed to prove a prima facie case thus the appellant and Thanasegaran were acquitted and discharged. On appeal, the Court of Appeal struck out appeal against Thanasegaran but allowed the appeal against the appellant; hence the appellant was called to enter his defence. The prosecution's case was based on the evidence of the deceased's wife ('SP5') who testified that she saw the appellant's mother standing together with the appellant and Thanasegaran in front of her house. SP5 also testified that she saw the appellant stab the deceased on his neck with a knife. The prosecution also relied upon the evidence of the deceased's neighbor ('SP9') who came to the crime scene after the incident. In defence, the appellant contended that a fight broke out between him and the deceased, the deceased's relatives assaulted him and he fled the scene. In his caution statement, the appellant stated that his mother did not witness the fight. At the end of the trial, the learned judicial commissioner ('JC') found that the appellant had failed to raise any reasonable doubt in the prosecution's case, hence convicted the appellant of the charge of murder. Aggrieved by the decision, the appellant filed the present appeal. The appellant submitted that the learned JC based her finding on the order of the Court of Appeal and there was nothing in the judgment to show the learned JC evaluated all the evidence before making her final finding ('the first issue'). The appellant further submitted that the learned JC erred in invoking adverse

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inference against the appellant for not calling his mother as a defence witness. In response, the prosecution submitted that since the Court of Appeal had ordered for the appellant to enter his defence, it was not necessary for the trial judge to revisit the prosecution case. It was also submitted that there was no error in the evaluation of the defence case.

Held, dismissing the appeal and affirming the conviction and sentence of the appellant by the High Court:

(1) A prima facie case having been found by the Court of Appeal, it was incumbent upon the appellant to present evidence in his defence to raise a reasonable doubt in the prosecution's case. Based on the judgment, the court was satisfied that in the process of evaluating the evidence for the defence, the learned JC considered the evidence of SP5 and SP9. Accordingly, there was no merit in the first issue (see para 10).

(2) The court disagreed with the decision of the learned JC in invoking an adverse inference against the appellant for not calling his mother as a witness. Given that the appellant's statement in his cautioned statement said that his mother did not witness the quarrel or fight the court could not see how the evidence of the mother could have corroborated the appellant's story. Thus, the adverse presumption under s 114(g) of the Evidence Act 1950 ought not to have been invoked against the appellant. Be that as it may, there was ample evidence to sustain the finding of the learned JC that the appellant had failed to raise any reasonable doubt in the prosecution case. In all the circumstances, there was no substantial miscarriage of justice (see paras 21 & 23).

[Bahasa Malaysia summary

Perayu dituduh bersama saudara lelakinya, seorang yang bernama Thanasegaran kerana membunuh seorang yang bernama Perumal a/l Kuppan ('si mati') di bawah s 302 Kanun Keseksaan ('Kanun') dibaca bersama dengan s 34 Kanun. Hakim perbicaraan pada mulanya mendapati pihak pendakwaan telah gagal membuktikan kes prima facie oleh itu perayu dan Thanasegaran dibebaskan dan dilepaskan. Atas rayuan, Mahkamah Rayuan membatalkan rayuan terhadap Thanasegaran tetapi membenarkan rayuan terhadap perayu; maka perayu dipanggil untuk memasuki pembelaannya. Kes pihak pendakwan adalah berdasarkan atas keterangan isteri si mati ('SP5') yang memberi keterangan yang dia melihat ibu perayu berdiri bersama dengan perayu dan Thanasegaran di hadapan rumahnya. SP5 juga memberi keterangan bahawa dia nampak perayu menikam si mati di leher dengan pisau. Pihak pendakwaan juga bergantung ke atas keterangan jiran si mati ('SP9') yang datang ke tempat kejadian selepas berlakunya kejadian tersebut. Dalam pembelaan, perayu berhujah bahawa pergaduhan berlaku di antara dia dan si mati, saudara mara si mati menyerangnya dan melarikan diri dari tempat kejadian. Dalam kenyataan beramarannya, perayu menyatakan bahawa ibunya tidak menyaksikan

pergaduhan tersebut. Pada akhir perbicaraan, pesuruhjaya kehakiman yang bijaksana ('PK') mendapati bahawa perayu telah gagal untuk membangkitkan apa-apa keraguan munasabah dalam kes pihak pendakwaan, maka menyabitkan perayu dengan tuduhan membunuh. Tidak puas hati dengan keputusan tersebut, perayu memfailkan rayuan ini. Perayu berhujah bahawa PK yang bijaksana mendasarkan dapatan beliau atas perintah Mahkamah Rayuan dan tidak terdapat apa-apa di dalam penghakiman untuk menunjukkan PK yang bijaksana menilai kesemua keterangan sebelum membuat dapatan akhirnya ('isu pertama'). Perayu selanjutnya berhujah bahawa PK yang bijaksana tersilap dalam membangkitkan inferens bertentangan terhadap perayu kerana tidak memanggil ibunya sebagai saksi pembelaan. Dalam menjawab, pihak pendakwaan berhujah bahawa memandangkan Mahkamah Rayuan telah memerintahkan perayu untuk memasukkan pembelaannya, ia tidak perlu untuk hakim perbicaraan menyemak semula kes pihak pendakwaaan. Ia juga dihujahkan bahawa tidak terdapat kesilapan di dalam penilaian kes pembelaan.

Diputuskan, menolak rayuan dan mengesahkan sabitan dan hukuman perayu oleh Mahkamah Tinggi:

(1) Setelah kes prima facie didapati oleh Mahkamah Rayuan, ia adalah wajib ke atas perayu untuk mengemukakan keterangan di dalam pembelaannya untuk membangkitkan keraguan munasabah di dalam kes pihak pendakwaan. Berdasarkan penghakiman, mahkamah berpuashati bahawa dalam proses penilaian keterangan untuk pembelaan, PK yang bijaksana mempertimbangkan keterangan SP5 dan SP9. Oleh itu, tidak terdapat merit di dalam isu pertama (lihat perenggan 10).

(2) Mahkamah tidak bersetuju dengan keputusan PK yang bijaksana dalam membangkitkan inferens bertentangan terhadap perayu kerana tidak memanggil ibunya sebagai saksi. Dengan pernyataan perayu di dalam kenyataan beramarannya menyatakan yang ibunya tidak menyaksikan perkelahian atau pergaduhan, mahkamah tidak dapat melihat bagaimana keterangan ibu tersebut boleh menyokong cerita perayu. Oleh itu, anggapan bertentangan di bawah s 114(g) Akta Keterangan 1950 patut tidak dibangkitkan terhadap perayu. Walau bagaimanapun, terdapat keterangan yang kukuh untuk mengekalkan dapatan PK yang bijaksana bahawa perayu telah gagal untuk membangkitkan apa-apa keraguan munasabah dalam kes pihak pendakwaan. Dalam keadaan, tidak terdapat ketidakadilan yang substansial (lihat perenggan 21 & 23).]

Notes

For cases on appeal against conviction and sentence, see 5(1) *Mallal's Digest* (5th Ed, 2015) paras 301–419.

For cases on failure to call witness, see 7(1) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 470–506.

Cases referred to

Abu Bakar v Regina [1963] 1 MLJ 288 (refd)
Baharom v PP [1960] 1 MLJ 249 (refd)
Choo Chang Teik & Anor v PP [1991] 3 MLJ 423, SC (refd)
Goh Ah Yew v PP [1949] 1 MLJ 150, CA (refd)
Illian & Anor v PP [1988] 1 MLJ 421, SC (refd)
Manimaran a/l Amas v PP and other appeals [2015] 1 MLJ 18, CA (refd)
Mohana Dass a/l Velayutham v PP [2014] MLJU 1855; [2015] 5 CLJ 32, CA (refd)
Pendakwa Raya lwn Sulaiman bin Saidin [2010] 3 MLJ 383, CA (refd)
PP v Chia Leong Foo [2000] 6 MLJ 705, HC (refd)
Tan Foo Su v PP [1967] 2 MLJ 19 (refd)
Tay Kok Wah v PP [2012] 4 MLJ 502, CA (refd)

Legislation referred to

Dangerous Drugs Act 1952 s 37(d), (da)
Evidence Act 1950 s 114(g)
Penal Code ss 34, 302

Appeal from: Criminal Trial No 45B-6–11 of 2011 (High Court, Ipoh)

Rao Jayananda (Rao & Kamal) for the appellant.
Wong Poi Yoke (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Vernon Ong JCA:

INTRODUCTION

[1] The appellant was charged together with his brother one Thanasegaran a/l Manni for the murder of one Perumal a/l Kuppan ('the deceased') under s 302 of the Penal Code read together with s 34 of the Penal Code. The charge reads as follows:

> Bahawa kamu, bersama-sama pada 14.11.2010 antara jam 9.00 malam hingga 9.45 malam di hadapan rumah No. A11, Bahagian Sepong, Ladang Sg. Samak, Ulu Bernam, di dalam daerah Hilir Perak, di dalam Negeri Perak Darul Ridzuan, dalam mencapai niat bersama kamu telah melakukan pembunuhan dengan menyebabkan kematian ke atas Perumal a/l Kuppan No. KP: 83041-08-6957 dan oleh yang demikian kamu telah melakukan kesalahan yang boleh di hukum di bawah Seksyen 302 Kanun Keseksaan dibaca bersama Seksyen 34 Kanun yang sama.

[2] On 7 August 2014, the learned trial judge found that the prosecution had failed to prove a prima facie case at the end of the prosecution case. Consequently, the appellant and Thanasegaran were acquitted and discharged.

The prosecution appealed against the said decision to the Court of Appeal. The appeal against Thanasegaran was struck out as the notice of appeal was not served on him. However, the appeal against the appellant was allowed and the appellant was called to enter on his defence.

[3] On 23 July 2015, the trial was subsequently conducted by learned judicial commissioner ('JC') SM Komathy Suppiah as the trial judge in the first instance had already retired. On 23 September 2015 the appellant was convicted and sentenced to death. This is the appellant's appeal against conviction and sentence.

THE PROSECUTION'S CASE

[4] The prosecution's case as found by the trial judge in the first instance is that at 9pm on the night of 14 November 2010, the appellant and Thanasegaran came to the deceased's house. They knocked on the door and asked the deceased to come out. The deceased went out and talked with the appellant and Thanasegaran. The deceased's wife ('SP5') saw the appellant's mother standing together with the appellant and Thanasegaran in front of the house. The appellant's mother asked the deceased why he quarrelled with her sons. SP5 then went out of the house and asked the appellant's mother what the commotion was all about. At that moment, SP5 saw the appellant and Thanasegaran punch the deceased and push him down on the floor. SP5 then saw Thanasegaran restraining the deceased by pulling the deceased's hands behind the deceased's back. SP5 saw the appellant stab the deceased on his neck with a knife; SP5 identified the knife marked as exh P10B. SP5 cried out to her brother for help. The deceased was conscious and lying on the ground when SP5's brother and SP9 a neighbour arrived at the scene. By that time, the appellant, Thanasegaran and their mother had already fled the scene. The deceased was then taken to hospital.

DECISION OF THE HIGH COURT

[5] The appellant gave evidence on oath in his defence. No other witnesses were called. The appellant's defence was that a fight broke out between him and the deceased, the deceased's relatives assaulted him and he fled the scene.

[6] The learned JC found that the appellant's version to be diametrically opposite to that of SP5 and SP9. The learned JC also found that there were material discrepancies between the appellant's evidence and his cautioned statement and that the appellant failed to explain the discrepancies. In her judgment, the learned JC found that the appellant had offered no credible explanation, but on the contrary, presented a confusing story.

[7] As such, the learned JC held that the appellant has failed to raise any reasonable doubt in the prosecution case. The appellant was accordingly convicted of the charge of murder.

SUBMISSION OF COUNSEL

[8] Before us, learned counsel for the appellant advanced five main grounds to support his argument that the conviction was unsafe. First, it was argued that the learned JC failed to conduct a proper evaluation of all the evidence at the conclusion of the trial (*Mohana Dass a/l Velayutham v PP* [2014] MLJU 1855; [2015] 5 CLJ 32 (CA)). It was contended that the learned JC based her finding on the order of the Court of Appeal and there was nothing in the judgment to show the learned JC evaluated all the evidence before making her final finding. Second, the learned JC failed to consider the discrepancy between the evidence of SP5 and SP9; that SP5 said she saw the appellant stabbing the deceased whilst SP9 said that when he arrived at the scene he saw the appellant and the appellant's mother coming to the scene. Third, there was no proper evaluation of the pathologist's evidence. Fourth, the police reports of SP5 and SP9 were not produced by the prosecution. Lastly, the learned JC erred in invoking an adverse inference against the appellant for not calling his mother as a defence witness.

[9] In reply, learned DPP submitted that since the Court of Appeal has ordered for the appellant to enter his defence, it was not necessary for the trial judge to revisit the prosecution case (*Pendakwa Raya lwn Sulaiman bin Saidin* [2010] 3 MLJ 383 (CA); *Manimaran a/l Amas v Public Prosecutor and other appeals* [2015] 1 MLJ 18 (CA)). The duty of the trial judge is to focus on the defence and to test the defence evidence against the prosecution case in order to ascertain whether the defence has raised any reasonable doubt on the prosecution case. The learned JC tested the defence version against the evidence of SP5 and SP9. The learned JC found that the appellant could not explain the inconsistencies between his evidence and his cautioned statement. The learned JC gave reasons why she disbelieved the appellant's version. There was no error in the evaluation of the evidence at the end of the defence case.

OUR DECISION

[10] On the first issue, we agree with the learned DPP that a prima facie case having been found by the Court of Appeal, it was incumbent upon the appellant to present evidence in his defence to raise a reasonable doubt in the prosecution's case. We have perused the judgment and are satisfied that in the process of evaluating the evidence for the defence, the learned JC considered the evidence of SP5 and SP9. Accordingly, we find no merit in the first issue.

[11] The second, third and fourth issues relate to the prosecution case — relating to the alleged discrepancy between the evidence of SP5 and SP9, the pathologist's evidence and the non-production of SP5 and SP9's police reports. As such, they are non-issues in the light of the finding of the Court of Appeal that the prosecution has made out a prima facie case against the appellant whereupon the appellant was called upon to enter on his defence to the charge.

[12] On the fifth issue, the learned JC found that the prosecution has made out a complete case against the appellant and that the evidence of the appellant's mother, if called, could have corroborated his story. In not calling his mother the appellant failed to call a material witness when calling such a witness is the only way to negate the charge against him. As such, the learned JC invoked an adverse inference against the appellant under s 114(g) of the Evidence Act 1950 and held that, if called the mother instead of rebutting would sustain the charge (*Choo Chang Teik & Anor v Public Prosecutor* [1991] 3 MLJ 423 (SC)).

[13] In *Goh Ah Yew v Public Prosecutor* [1949] 1 MLJ 150 (CA), the appellant was charged: (1) with carrying arms, or alternatively with carrying component parts of a firearm; and (2) with consorting. In that case the learned DPP invited the assessors in the court below to draw an inference against the appellant by reason of his failure to call a certain witness who was present in court and available. The Court of Appeal held that:

> No inference can be drawn against an accused person in a criminal trial. There is no duty upon an accused person to call any evidence. He is at liberty to offer evidence or not as he thinks proper and no inference unfavourable to him can be drawn if he adopts one course rather than the other.

[14] *Goh Ah Yew* was followed in *Abu Bakar v Regina* [1963] 1 MLJ 288 where the appellant was a police officer who was convicted for corruptly obtaining $20 as a reward for forbearing to take action against one Tan Geok Leng who had been riding a motor-scooter with 'L' plates whilst holding a provisional licence. The appellant admitted receiving the money but said it was commission for having found a buyer for the motor-scooter alleged by him to belong to one Tan Hong Seng. The trial district judge observed that Tan Hong Seng had not been called as a witness for the defence and said 'If the defence story was true then Tan Hong Seng could have corroborated it in material particulars'. Winslow J held that the trial judge allowed himself to be swayed by the failure of the defence to call Tan Hong Seng as a witness and misdirected himself in requiring corroboration of the defence story. There is no duty cast upon the defence in a criminal trial to call any evidence.

[15] In *Illian & Anor v Public Prosecutor* [1988] 1 MLJ 421 (SC), the Supreme Court also followed *Goh Ah Kew*. In that case, the two appellants were

charged with jointly trafficking in dangerous drugs. The prosecution evidence was that a police party saw two males cycling together into the compound of Kangar Hospital, and also subsequently saw one of them handed two plastic bags to the other. The police closed in to arrest the two persons. The police were able to arrest the second appellant; the first appellant fled and escaped. However, some five months later, the first appellant was arrested when he came to the Kangar Magistrate's Court in connection with some traffic offence. In his defence, the first appellant said that on the day in question he was in Padang Besar, Thailand and in support he produced a border pass, the genuineness of the contents of which was challenged by the prosecution. In his judgment, the trial judge remarked that 'it is incumbent upon the defence to call this witness, let alone object to the calling of the witnesses', referring to the defence's objection of the prosecutions' calling of the immigration officer on the question of the authenticity of the border pass. Wan Sulaiman SCJ speaking for the Supreme Court said at p 153 said s 114(g) of the Evidence Act 1950 cannot be invoked against an accused person or for that matter failure to call any witnesses made the subject of comment to the jury at a jury trial.

[16] Be that as it may, it appears that the rule that an adverse inference cannot be invoked against an accused person is not absolute. In *Choo Chang Teik & Anor v Public Prosecutor* [1991] 3 MLJ 423 (SC), the Supreme Court in qualifying the rule held that an adverse inference can be drawn against an accused person when a complete case has been made out against the accused person and the case disclosed that there is evidence which could be produced by the accused person to negate the charge against him. In that case, the appellants were charged with trafficking in heroin. The heroin was found in a house in which the first and second appellants were also found together with another person, since deceased. On the evidence adduced, the trial judge called on the appellants to enter their defence as he held that the presumption arose that they had possession and control of the heroin and that they had the presumed knowledge of the existence of the drugs in the house. The appellants in their defence said that the drugs belonged to the other person who had since died. Evidence was given that the travelling bag in which the drugs were found belonged to that other person. The first appellant said he was walking to the kitchen when suddenly he saw some people with crowbar and pistol in hand shouting at him. He ran away fearing that he might be assaulted. He said he did so because of his previous experience of being beaten by thugs at his friend's house at Johore Bahru which left him disabled for about two years. They had injured his waist; and he produced a certificate of his membership of a handicapped persons' association to prove his contention. The trial judge drew the adverse inference under s 114(g) against the first appellant because he failed to call his witness to testify that he had been attacked by thugs two years ago. Mohamed Yusoff SCJ speaking for the Supreme Court said at p 425 as follows:

> It is noteworthy that the present case differs from *Illian's*. Here, the prosecution had

> taken particular issue on the first appellant's contention that he had been beaten two years ago. Evidence in rebuttal was adduced by the prosecution showing that the first appellant had told some police officers during that period that he had a fall in his cell which caused his injury.
>
> The distinction in the present case is that upon rebuttal evidence having been adduced, the law has cast the burden on the first appellant to prove his own contention by the evidence of his friend at whose house he was seen beaten. When he failed to offer such proof the natural conclusion is that the proof, if produced, instead of rebutting would sustain the charge.
>
> On this view we are in agreement with the learned judge that an adverse inference can be drawn against the first appellant in the present situation when an complete case has been made out against the first appellant and the case disclosed that there is evidence which could be produced by the appellant to negate the charge against him — see commentary on s 114 *Law of Evidence in India* by Woodroffe and Ameer Ali (13th Ed) at p 2656.

[17] However, in a more recent ruling in *Tay Kok Wah v Public Prosecutor* [2012] 4 MLJ 502 (CA), Apandi Ali JCA (as he then was) speaking for the Court of Appeal said that it is settled law that no adverse inference can be drawn against an accused person if he offers no evidence; an accused person is under no duty to call any evidence. The burden of proof may shift to an accused person if a presumption of law operates to presume certain facts as proved until evidence to the contrary is proved.

[18] Such presumptive provisions in law may be found under the Dangerous Drugs Act 1952 ('the DDA 1952'). For example, s 37(d) of the DDA 1952 provides that any person having custody or control of dangerous drugs shall, *until the contrary is proved*, be deemed to have been in possession of such drug and shall, *until the contrary is proved*, be deemed to have known the nature of such drug. Similarly, under s 37(da) of the DDA 1952, any person who is found in possession of stipulated minimum amounts of such drugs shall be presumed, *until the contrary is proved*, to be trafficking in such drug.

[19] Indeed, the well-settled principle that the failure of the defence to produce a particular witness must not be subject of adverse comment by the court is underscored by a passage in the judgment of Raja Azlan Shah J (as HRH then was) in *Tan Foo Su v Public Prosecutor* [1967] 2 MLJ 19:

> It is the duty of the court to consider the defence story which may produce one of three results, namely, that if the court is convinced of the truth of the accused's story or that it created a reasonable doubt as to guilt, then the court must acquit the accused person. Sometimes the defence story strengthens the prosecution case and in that case the court has to find the accused guilty. But it is not the duty of the accused person to prove his innocence, far less to produce or to bring a particular witness to support his story. Failure of the defence to produce a particular witness

must not be made the subject of adverse comment by the court, otherwise it would amount to a misdirection. In my view, the learned magistrate overlooked the authorities on that point which are afforded by the case of *Goh Ah Yew v Public Prosecutor* [1949] 1 MLJ 150 and the case of *Abu Bakar v Regina* [1963] 1 MLJ 288 where the comment made by the trial judge in the latter case is almost similar to the present case. In that case the appellate court said that there is no duty cast upon the defence in a criminal case to call any evidence and no inference unfavourable to him can be drawn. There the learned district judge appeared to have drawn an unfavourable inference because the absent witness was not called by the defence. And so in this particular case. If the learned magistrate had not over-looked those two authorities I am sure he would not have misdirected himself on this point.

[20] In the present case, appellant's defence is predicated on his cautioned statement marked exh D1. The appellant read out the pertinent portions of his cautioned statement in his examination-in-chief. On the night in question, the appellant was sleeping at home when the deceased came to the house and asked the appellant to have a discussion with one Gunasegaran over a certain matter. The appellant and the deceased then proceeded to Gunasegaran's house. As the appellant, the deceased and Gunasegaran were talking, Thanasegaran came along. Subsequently, a fight broke out between him and the deceased and the deceased's relatives. The appellant said that he and Thanasegaran were beaten up and they fled the scene. The appellant also said that his mother was present at the scene but did not witness the quarrel or fight.

[21] We have perused the appeal record and are unable to agree with the decision of the learned JC in invoking an adverse inference against the appellant for not calling his mother as a witness. Given that the appellant's statement in his cautioned statement said that his mother did not witness the quarrel or fight we do not see how the evidence of the mother could have corroborated the appellant's story. At any rate, the case at hand relates to a charge of murder of which there is no such presumptive provisions as aforesaid (*Baharom v Public Prosecutor* [1960] 1 MLJ 249; *Public Prosecutor v Chia Leong Foo* [2000] 6 MLJ 705). As such, we do not think that the invocation of the adverse inference is in the circumstances warranted or justified.

[22] Notwithstanding that it was our view that the non-calling of any particular witness by an accused person is a matter which the trial judge is entitled to consider in assessing the weight of the evidence of the defence; and to consider whether the accused person has succeeded in raising any reasonable doubt on the prosecution case. The trial judge however was not entitled only to draw an adverse inference against an accused person on account of his failure in failing to call any witness.

[23] Consequently, we are inclined to agree with the appellant's contention that in the particular circumstances of this case, the s 114(g) adverse

presumption ought not to have been invoked against the appellant; consequently, we find that there was a misdirection by the learned JC to that extent. Be that as it may, we find that there was ample evidence in the case to sustain the finding of the learned JC that the appellant has failed to raise any reasonable doubt in the prosecution case. The learned JC having formed her view on the evidence, which she heard — a view which was open to her — it necessarily followed that she should find the charge against the appellant proved. Our own subsequent reading of the transcript of the evidence has confirmed us in this view. In all the circumstances, we do not consider that any substantial miscarriage of justice has occurred.

[24] For the foregoing reasons, we dismissed the appeal. The conviction and sentence of the appellant by the High Court was affirmed.

Appeal dismissed; conviction and sentence of appellant by High Court affirmed.

Reported by Dzulqarnain Ab Fatar